

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT E. JOHNSON,

Plaintiff,

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SARA DI VITTORIO et al.,

## Defendants.

CASE NO. C12-6018 RJB-JRC

## ORDER ON PENDING MOTIONS

The District Court has referred this 42 U.S.C. §1983 civil rights action to the undersigned Magistrate Judge. The authority for the referral is found in 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate Judges Rules MJR 1, MJR 3, and MJR 4.

Plaintiff has filed a motion asking that his original complaint be held in abeyance pending a ruling on his objections to the Court's order that he file an amended complaint (ECF No. 9). Plaintiff has also filed a motion asking for appointment of counsel (ECF No. 10). There is not yet a party to respond to plaintiff's motions because no defendant has been served in this action. Therefore, there is no reason to wait until the noting date to address these two motions.

The motion to hold the original complaint in abeyance is DENIED. The original complaint is part of the electronic file (ECF No. 5). The original complaint will remain part of the file and not be deleted. Therefore, there is no reason to hold the document in abeyance.

The motion for appointment of counsel is also DENIED. There is no right to have counsel appointed in cases brought under 42 U.S.C. § 1983. Although the court can request counsel to represent a party, 28 U.S.C. § 1915(e) (1), the court may do so only in exceptional circumstances. *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986); *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984); *Aldabe v. Aldabe*, 616 F.2d 1089 (9th Cir. 1980). A finding of exceptional circumstances requires an evaluation of both the likelihood of success on the merits and the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Wilborn*, 789 F.2d at 1331.

Plaintiff has demonstrated an ability to articulate his claims pro se. His pleadings are replete with legal authority. *See* (ECF No. 10, motion for appointment of counsel). The Court does not have a servable complaint before it at this time and therefore cannot evaluate plaintiff's likelihood of success on the merits.

Plaintiff's amended complaint remains due on or before January 25, 2013.

Dated this 16<sup>th</sup> day of January, 2013.



J. Richard Creature  
United States Magistrate Judge